

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4980 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUBHAI HEMRAJBHAI

Versus

DY. COLLECTOR OF BANASKANTHA & ORS.

Appearance:

MS KUSUM SHAH for Petitioner

MS PS PARMAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties.

2. The land in question, comprising in survey No.130, admeasuring 2 acres and 30 gunthas, situated in the sim of Charotar, Tal. Palanpur, District Banaskantha, was of the ownership and in occupation of the respondent No.4. The respondent No.4 sold the land in question to the petitioner for Rs.5000/- by a

registered sale deed dated 28th July, 1982 and the possession thereof has also been given to the petitioner. The petitioner is the owner, occupant in possession and cultivation of survey No.96/7 having common boundary with the suit land in north. The necessary correction in the revenue record i.e. in village form no.7/12 has also been made after the aforesaid sale deed. The petitioner's name was entered as a occupant cultivator. The respondent No.3 gave a show-cause notice to the petitioner calling upon him to show cause why the land in dispute should not be resumed to the State Government as the sale thereof, which is being a fragment and restricted tenure was illegal. Under the order dated 15th February, 1983 after considering the evidence of the parties and hearing their representatives, the respondent No.3 held that the suit land is a land regranted on new tenure and the sale thereof has been made in breach of the conditions, and therefore, as per Clause 4 of the Government circular dated 16-7-1982 ordered for resumption of the land to the Government and to dispose of the same as per the rules.

3. Being aggrieved of the order of the Deputy Collector aforesaid, the petitioner took the matter in appeal before the Collector, Banaskantha, but that too has been dismissed. Then the matter was taken up by him before the State Government in revision, but the same has also been dismissed and hence, this Special Civil Application.

4. The manifold contentions have been raised by learned counsel for the petitioner challenging the validity and legality of the orders of the authorities below, but I do not consider it necessary to advert to all those contentions, as I am of the opinion that this matter deserves to be remanded back to the revisional authority to decide the same afresh.

5. The counsel for the petitioner placed for the perusal of this Court the resolution of the Government of Gujarat, Revenue Department, dated 11-6-1968, and further resolution dated 5-8-1968, and contended that even if it is taken that the land has been transferred by the holder thereof, the sale could have been regularised by directing the petitioner to pay 20 times the assessment for conversion of the land into old tenure. The counsel for the petitioner contended that the land was a gifted land for services offered and even if it is taken to be of new tenure then the transfer of the same was permissible though with the approval of the concerned authorities. So the resolutions permit for the

regularisation of the sale made in contravention of the conditions of the new grant and further the sale was permissible of such land on approval of the competent authority. The order of cancellation of the sale is wholly arbitrary and unjustified.

6. I have gone through the order of the revisional authority and I find therefrom that the aforesaid two resolutions were not placed for consideration of the said authority by the person who was appearing for the petitioner. So if any fault lies it lies with the petitioner.

7. However, now these resolutions have been placed before this court, and as such, I consider it to be appropriate to remand the matter back to the revisional authority for the consideration of these resolutions as well as to decide the matter afresh on merits. Till the matter is decided by the revisional authority, the interim relief granted by this court shall continue. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-